



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

1000 Washington Street, 10TH Floor, Boston, MA 02118-6400

(617) 956-1500 · Fax (617) 956-1599 · TDD (617) 956-1577

www.Mass.Gov/DOB

MIKE KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

EDWARD A. PALLESCHI
UNDERSECRETARY

MARY L. GALLAGHER
COMMISSIONER

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

June 12, 2020

Industry Guidance Regarding Annual Meetings for Massachusetts Chartered Credit Unions

The Massachusetts Division of Banks (Division) is issuing this industry guidance in response to requests for clarification of supervisory expectations during the 2019 novel Coronavirus (COVID-19) emergency and anticipated continuing social distancing protocols relative to the annual meeting requirement set forth in Massachusetts General Laws chapter 171, section 11.

The Division recognizes that the Governor's March 10, 2020 Executive Order declaring a State of Emergency¹ and subsequent order (Order)² prohibiting gatherings of 10 or more individuals directly impacts the ability of Massachusetts-chartered credit unions (credit union or credit unions) to hold their annual membership meetings as they normally would. In the time since Governor Baker issued Executive Order 591 declaring a state of emergency in the Commonwealth and the release of subsequent social distancing guidelines to confront the COVID-19 pandemic, the Division has received inquiries from credit unions about whether the Division could provide additional clarification regarding the annual meeting requirement during this declared emergency. With respect to credit unions that have not yet held their annual meeting, the Division is issuing the following industry guidance in an effort to provide further scheduling flexibility for credit unions with respect to holding their annual meetings. In addition, the Division is providing this guidance to express its non-objection to the use of remote communications to conduct the annual meeting either as a virtual meeting or as a hybrid meeting that includes the limited in-person attendance of members in which social distancing and related guidelines on larger gatherings would be followed to protect the health and safety of members and credit union personnel.

Postponement of Annual Meeting

A Massachusetts credit union that has not yet held its 2020 annual membership meeting may postpone its annual meeting until the State of Emergency is lifted, the Order has expired or is rescinded, or

¹ Executive Order No. 591, *Declaration of a State of Emergency to Respond to COVID-19* (March 10, 2020).

² COVID-19 Order No. 13, *Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People*, (March 23, 2020) and COVID-19 Order No. 30, *Order Further Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People* (April 28, 2020).

such time as the credit union believes it may safely hold its annual meeting. The Division recognizes that even after the State of Emergency is lifted and the Order expires or is otherwise no longer in effect, that adhering to recommended social distancing protocols or guidance may nonetheless counsel against holding an in-person annual meeting of the membership. Through this industry guidance, the Division is confirming that credit unions will not be subject to any adverse regulatory finding by the Division for such delay if the timing of the postponed meeting were to be held on a date beyond the statutory deadline. The Division further recognizes that such postponement(s) may continue through 2020. If a credit union chooses to hold a postponed in-person annual meeting, the meeting should be held in accordance with any social distancing or public health guidelines for larger in-person gatherings that may be recommended at that time. Credit Unions should ensure that notice of the annual meeting postponement(s) are communicated to members in accordance with the credit union's by-laws.

Virtual/Hybrid Annual Meeting with Voting by Mail

The Division has considered whether credit unions may hold their annual meetings by utilizing remote communication (virtual meeting) or through a combination of remote communication in conjunction with limited in-person attendance of members (hybrid meeting). A credit union may also utilize mail voting with either option. For credit unions that do not wish to postpone their annual meeting for an indefinite or extended period of time, the Division has determined that in light of the COVID-19 pandemic and its continuing risks, such credit unions may conduct virtual or hybrid annual meetings.³ The Division has determined that a virtual meeting convened via telephonic means may satisfy the requirements for the annual meeting. This option may also be combined with voting by mail if the credit union chooses. Credit unions that wish to offer the *additional* option of accessing the meeting remotely via a synchronous, real-time videoconference may do so as long as participation by telephone is also available. The notice of the annual meeting must include clear instructions describing how to access the meeting by remote communication and procedures for how members will be able to participate in the meeting, including how they will be able to present questions either prior to or during the annual meeting.

Credit Unions wishing to exercise a virtual meeting option should adhere to the following:

- Credit Union members must be notified of the virtual or hybrid annual meeting in accordance with the credit union's by-laws, and provide all necessary information for accessing the meeting.
- Notice of the annual meeting must also include an agenda for the meeting with a brief explanation of the items to be addressed. If the credit union is utilizing mail voting, it should also include a mail ballot for credit union members to vote on the proposals presented during the annual meeting.
- The procedures governing the virtual or hybrid meeting must include reasonable provisions that will allow the credit unions to verify the identity of the members that join through a remote communication method.

³ Massachusetts General Laws chapter 171, section 11 provides that the voting methods of the credit union "shall be subject to conditions and limitations as the commissioner may establish."

- Technical support should be available during the annual meeting to assist any members that experience difficulties accessing the meeting or participating through remote communications to ensure individuals do not miss the opportunity to ask questions or engage in discussions.
- If the credit union chooses to also utilize voting by mail, the annual meeting should be held open for an extended period of time so that mail ballots may be received by the credit union and tallied by credit union officials. Extended hours for the annual meeting would permit the credit union to receive completed ballots by mail or allow an individual to deliver their completed ballot in-person at one of the credit union's office locations. The notice of the meeting must also specify the date by which such ballots must be received in order for the vote of each member to be counted. The meeting will be closed following the deadline specified for return of the mail ballots. In addition to complying with the notice requirement(s) adopted in the credit union's by-laws, the credit union should take all other reasonable steps to ensure members are notified of the virtual or hybrid annual meeting.

If the credit union's board of directors elects to postpone the 2020 annual meeting due to COVID-19 considerations, the board meeting minutes should record the decision by the board to postpone the annual meeting to a date following the termination of the declared emergency. Likewise, if the board decides to conduct the 2020 annual meeting by remote communication through a virtual or hybrid meeting, the board meeting minutes should also record this board decision.

A credit union may also wish to review and ratify all actions taken during the 2020 virtual or hybrid annual meeting at its next annual or special meeting.

Recognizing the significant governance considerations and challenges that have been presented by the COVID-19 pandemic, credit unions may also wish to review their bylaws in the weeks and months ahead to identify opportunities for possible amendments that would provide additional discretion and flexibility, where permissible, to respond to any similar emergency circumstances in the future.

The guidance provided above on postponing the annual meeting and conducting the annual meeting by remote communication applies solely to the 2020 annual meeting.

If you have any questions, please contact Merrily Gerrish, General Counsel, at (617) 956-1514 or merrily.gerrish@mass.gov.

Sincerely,

Mary L. Gallagher
Commissioner of Banks